IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15312 of 2003
with
SPECIAL CIVIL APPLICATION No 15270 of 2003
with
SPECIAL CIVIL APPLICATION No 2850 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

GUJARAT HINDI SAMAJ

Versus

STATE OF

Appearance:

1. Special Civil Application No. 15312 of 2003
MR DHAVAL D VYAS for Petitioner No. 1-11,13-18,20-22,24,27,29-36
DELETED for Petitioner No. 12,19,23,25-26,28
MR AD OZA, Ld.GOVERNMENT PLEADER for Respondent No. 1-2,5-10
MR AD OZA for Respondent No. 3
NOTICE SERVED BY DS for Respondent No. 4

2. Special Civil Application No. 2850 of 2004
MR SHALIN N MEHTA for Petitioner No. 1
MR AD OZA, Ld.GOVERNMENT PLEADER for Respondent No. 1

(In all matters)

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 29/07/2004

COMMON C.A.V JUDGEMENT

Respondent No.4 as such is not a necessary party to the present issue and, therefore, shall stand deleted.

2. Rule in SCA No.15312/2003. Mr.A.D.Oza, learned AGP waives service of rule for all the respondents including Secondary Education Board. All matters are finally heard.

3. In all these petitions there are common issues raised and, therefore, they are being dealt with in this common judgement.

4. The larger question which arises for consideration of this Court is as to whether "Hindi" in Gujarat can be said to be linguistic minority or not and if "Yes", whether the concerned petitioners can claim the benefit of Article 29 read with Article 30 of the Constitution of India by claiming status of minority institution.

5. The short facts of the case are that as per the petitioners, they are running educational institutions whose details are given in the concerned petitions. It is further the case of the petitioners that after establishment of the institutions the District Primary Education Officer had initially conferred the status of minority institutions. Of course, it is the case of the respondent authorities that so far as some of the petitioner institutions are concerned, such status was not conferred and there are decisions for such purpose by the Educational Tribunal. It is further the case of the petitioners that the petitioners are communicated by the authorities that as per the Government Resolution dated 14-11-1979, the only three languages are treated as linguistic minority namely; "Urdu" "Sindhi" and "Marathi" and, therefore, "Hindi" is not treated as linguistic minority in Gujarat State and, therefore, the petitioners cannot claim the status of linguistic minority. It is also the case of the respondent that "Hindi" is an official language and even in Gujarat State the same is treated as official language and, therefore, in any event, "Hindi" cannot be treated as linguistic minority in Gujarat State. As per the petitioner, the aforesaid

communication of the respondent authorities that "Hindi" is not to be treated as linguistic minority results into taking away the protection under Article 29 read with Article 30 of the Constitution of India and, therefore, the petitioners have preferred these petitions for quashing of the said communication issued by the authority concerned and they have also claimed that the status linguistic minority upon the persons who are "Hindi" speaking people imparting secondary and higher secondary education through educational institutions be conferred upon them.

6. As per the Respondent authority, the major defence is based on the Government Resolution dated 14-11-1979 treating only three languages namely; "Urdu" "Sindhi" and "Marathi" as minority and it is further contended that "Hindi" is also accepted as official language in Gujarat State and, therefore, there is already a development of "Hindi" and, therefore, cannot be said to be as minority language or linguistic minority. In SCA No.15312/2003 there are additional grievances raised that the School run by so-called "Hindi" linguistic minority are bogus on paper and with a view to extract the benefits of Government grant without there being any legitimate right for such purpose. Various incidents in detail are referred to in the affidavit-in-reply filed on behalf of Respondent No.2 by J.N.Vasava contending, inter alia, that all the schools and the staff of the schools are rather, inter se, or their family members and the appointments are made from amongst the relatives and the favourists of the Trustees and as such there is no genuine effort to impart education, but to extract benefits of the Government grant and to pay salary at the cost of the Government. Of course, in rejoinder such aspects are denied by the concerned petitioners. It is also the case of the petitioners that even if there is no conferment of status by the authority, but if the status of minority can be established in the Court, the benefit deserves to be extended and the protection under Article 29 read with Article 30 of the Constitution can be maintained and would stand extended for the institutions of the petitioners.

7. Articles 29 and 30 of the Constitution of India which are relevant for the purpose of these petitions read as under:

"29. Protection of interests of minorities.
(1) Any section of the citizens residing in the territory of India or any thereof having a

distinct language, script or culture of its own shall have the right to conserve the same.

30. Right of minorities to establish and administer educational institutions.-

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

8. Article 29 of the Constitution confers the rights upon any section of the citizens having a distinct language, script or culture, to conserve the same. Article 30 of the Constitution provides for two types of minority, minority based on religion or minority based on language and confers rights upon such minority to establish and administer educational institutions of their choice. The other parts of Article 29 and 30 may not be relevant for the purpose of deciding the question as to whether people speaking "Hindi" can be said to be a linguistic minority or not. The Apex Court, in case of "TMA Pai Foundation and Others v. State of Karnataka", reported in 2002(8) SCC, 481, while considering the question as to what could be the unit for the purpose of deciding the linguistic minority, at para 183 and 184 has expressed its majority view, speaking through Mr. Justice V.N. Khare (as he was then), as under:

"183 It may be remembered that various entries in three lists of the Seventh Schedule are not powers of legislation but field of legislation. These entries are mere legislative heads and demarcate the area over which the appropriate legislatures are empowered to enact law. The power to legislate is given to the appropriate legislature by Article 246 and other articles. Article 245 provides that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. Under Article 246 Parliament has exclusive power to make law with respect to any of the matters enumerated in List I in the Seventh Schedule. Further, under clause (2) of Article 246 Parliament and subject to clause (1) the legislature of any State are empowered to make law with respect to any of the matters enumerated in List III Seventh Schedule and under

clause (3) of Article 246, the legislature of any State is empowered to enact law with respect to any of the matters enumerated in List II in the Seventh Schedule subject to clauses (1) and (2). From the aforesaid provisions it is clear that it is Article 246 and other articles which either empower Parliament or the State Legislature to enact law and not the entries finding place in three lists of the Seventh Schedule. Thus the function of entries in three lists of the Seventh Schedule is to demarcate the area over which the appropriate legislatures can enact laws but do not confer power either on Parliament or the State Legislatures to enact laws. It may be remembered, by transfer of the entries, the character of the entries is not lost or destroyed. In this view of the matter by transfer of contents of Entry 11 of List II to List III as Entry 25 has not denuded the power of the State Legislature to enact law on the subject "Education" but has also conferred power on Parliament to enact law on the subject "Education". Article 30 confers fundamental right on linguistic and religious minorities to establish and administer educational institutions of their choice. The test who are linguistic or religious minorities within the meaning of Article 30 would be one and the same either in relation to a State legislation or Central legislation. There cannot be two tests, one in relation to a Central legislation and the other in relation to a State legislation. Therefore, the meaning assigned to linguistic or religious minorities would not be different when the subject "Education" has been transferred to the Concurrent List from the State List. The test who are linguistic or religious minorities as settled in Keral Education Bill, 1957 case2 continues to hold good even after the subject "Education" was transposed into Entry 25 List III of the Seventh Schedule by the Forty-second Amendment Act. If we give different meaning to the expression "minority" occurring in Article 30 in relation to a Central legislation, the very purpose for which protection has been given to minorities would disappear. The matter can be examined from another angle. It is not disputed that there can be only one test for determining minority status of either linguistic or religious minority. It is, therefore, not permissible to argue that the test to determine the status of

linguistic minority would be different than the religious minorities. If it is not so, each linguistic State would claim protection of Article 30 in its own State in relation to a Central legislation, which was not the intention of the framers of the Constitution nor is the same borne out from the language of Article 30. I am, therefore, of the view that the test for determining who are the minority, either linguistic or religious, has to be determined independently of which is the law, Central or State.

184 In view of what has been stated above, my conclusion on the question who are minorities either religious or linguistic within the meaning of Article 30 is as follows:

The person or persons establishing an educational institution who belong to either religious or linguistic group who are less than fifty per cent of total population of the State in which the educational institution is established would be linguistic or religious minorities."

9. Therefore, it is clear that for claiming minority, either religious or linguistic, the population of such group should be less than 50% of the total population of the State, then only the protection for linguistic or religious minority can be claimed. Therefore, if the State is considered as the Unit and if the condition is to be examined only on the question of population, then in that case as per the figures given on behalf of the petitioners as per the certificate dated 4-8-2003 issued by the Joint Director, Directorate of Census Operations, Gujarat, Ahmedabad, copy whereof is produced at Annexure "D/2" based on census of 1991 as against the total population of Gujarat State of 41309582, the population of "Hindi" speaking was 1215825 which was in any case less than 50%. If the details given by the petitioners of SCA No.15312/2003 is considered, as per certificate dated 4-8-2003 from the authority, copy whereof is produced at Annexure "D/2", out of the total population of Gujarat State, 50596992, the figures of persons speaking "Hindi" is not published and, therefore, the said aspect will be required to be considered by the Government on the official figure which may be published by the Directorate of Census for Gujarat State on the basis of census 2001 and if the population of persons speaking "Hindi" is less than 50% of the total

population of the Gujarat State as it was in the year 1991, the group of persons speaking "Hindi" can be said as in minority in Gujarat State.

10. The contention has been raised on behalf of the respondent State that "Hindi" is not declared as linguistic minority as per the notification dated 14-11-1979 of the State Government and only "Urdu", "Sindhi" and "Marathi" are declared linguistic minority and, therefore, "Hindi" cannot be said as linguistic minority in Gujarat State. If the resolution dated 14-11-1979 is considered, copy whereof is produced at Annexure "A" to the affidavit-in-reply filed by Shri M.A.Patel, Deputy Director, Directorate of Primary Education, Sachivalaya, Gandhinagar in SCA No.2850/2004, it appears that the same is for constitution of Minority Board in Gujarat State by Labour, Social Welfare and Tribal Welfare Department of the State Government. As such, if the resolution is further considered, it appears that the prime purpose was of the Constitution of the Minority Board. As per the said resolution the object was not to consider the question of minority or who can claim minority but was for various objects as mentioned in para 2, 3, and 4 of the Resolution. Therefore, if the State while constituting a Board under the Society Registrations Act, 1860, has taken the decision to promote only certain linguistic minority namely; "Urdu", "Sindhi" and "Marathi", it cannot be said that the other group forming linguistic minority in the State shall stand deprived of the protection which is otherwise guaranteed under the Constitution of India as per Articles 29 and 30 of the Constitution. Further, it only records the minority for whom the Board has to attain the objects and the scope and ambit of the resolution dated 14-11-1979 is only for the purpose of constitution of Minority Board and it cannot be read as the declaration by the State Government that only "Urdu", "Sindhi" and "Marathi" and no other language can be said as linguistic minority, though otherwise may be the linguistic minority, keeping in view the provisions of Articles 29 and 30 of the Constitution.

11. The contention was also raised on behalf of the State Government that "Hindi" or people speaking "Hindi" are in majority at the National level. It was also contended that "Hindi" is accepted as the official language of the Country as well as of Gujarat State. It was also submitted that in view of the Article 351 of the Constitution, attempts are already being made by the Government of India for preserving and promotion of "Hindi" language and, therefore, group of persons

speaking "Hindi" cannot claim the status of linguistic minority in Gujarat State. No official record is produced by the State Government before this Court to support the contention that persons speaking "Hindi" are having majority i.e. to say more than 50% in comparison to the total population of the Country. On the contrary, the certificate dated 2-7-2004 issued by the Director of Census Operations, Gujarat State, based on the census of 1991 shows that the total population of the Country was 84,63,02,688 out of which the population of the persons speaking "Hindi" is shown as 33,72,72,114. Further, in view of the decision of the Apex Court in case of "TMA Pai Foundation" (supra) if the State is to be treated as the Unit for the purpose of deciding the status whether the total number of population of "Hindi" speaking is in majority or not at the national level would be irrelevant. It may be that the group of persons speaking "Hindi" may be forming majority in the State where "Hindi" is spoken as the regional language or as the mother tongue, but in a State where "Hindi" is not spoken as the regional language or as the mother tongue, the status of the group of persons speaking "Hindi" would not be the same in both the States. In case of former, it cannot claim status of linguistic minority, but in case of latter, if the population is less than 50%, then in view of the decision of the Apex Court in case of "TMA Pai Foundation" (supra), the status can be claimed as that of linguistic minority. To illustrate the situation persons speaking "Hindi" in U.P. where the majority of the population is speaking "Hindi" cannot claim status of linguistic minority, but the same will not be the case in the States of Tamil Nadu or Keral or Andhra Pradesh", where the population of persons speaking "Hindi" may be very less in comparison to the total population of the State. Therefore, it cannot be said that since there is majority of persons speaking "Hindi" at the national level linguistic minority cannot be claimed by such persons speaking "Hindi" even in the State where the population of such group is less than 50%.

12. Apart from the above, as such if the historic background is considered keeping in view the constitutional debates when the Constitution was framed, there was no unanimity on the point that the persons speaking "Hindi" are in majority at the national level. Even amongst persons speaking "Hindi" there are different alphabets and different languages in its script. Amongst "Hindi" speaking, the group forming "Hindi" "Devnagri" would be different and group forming "Hindi" Urdu" or "Hindi" - Persian" would be different. As such the intention by the Constitutional framers for giving

protection to the linguistic minority was to preserve one's own language, culture and script. If the provisions of Articles 29 and 30 of the Constitution are read and considered keeping in view the special directives provided under Chapter IV of the Constitution, it appears that on the basis of regions, various languages were identified. Article 350A of the Constitution provides that the facilities shall be provided for instructions in mother tongue at primary stage. Article 350B provides for appointment of Special Officer for linguistic minority by the President. Eight Schedule referred to in the Article 351 provides "Hindi" as regional language vide Sr. No.4. Therefore, if "Hindi" is included as one of the regional languages, merely because it is accepted as the official language at the national level or at the State level, the same would after the status of the persons speaking "Hindi" It may be recorded that "Hindi" is not necessarily the language of "Hindustani" and, therefore, Article 351 provides for promotion of the language of "Hindi" used in Hindustani. Therefore, the said contention of Mr.Oza that since "Hindi" is the official language at the national level and at the State level, persons speaking "Hindi" cannot claim status of linguistic minority in Guajrat State even if the population is of less than 50% cannot be accepted.

13. As such the question incidentally may also arise as to whether use of the language for speaking purpose by any group of persons would be sufficient to assert that such group of persons are belonging to "A" or "B" linguistic group or not? Merely because a person speaking "Hindi" or any other language, it cannot be said that he belongs to that linguistic group and he would be entitled to claim the benefit of such linguistic group. If the use of language for conversation is treated as the only criteria, then in that case, persons whose mother tongue is "Gujarati" and if he is settled since one or two generations in U.P., may start speaking "Hindi" and may claim benefit of linguistic minority even in Gujarat State. Such can never be the purpose of protecting any linguistic group. In the same way, the question may also arise that if a person whose forefathers are originally belonging to Gujarat and whose mother tongue can be said as "Gujarati" but is born in a State where "Hindi" is spoken and thereafter if he shifts and reestablishes in Gujarat, can such person claim the status of belonging to "Hindi" linguistic minority group. In normal circumstances, the answer would be "No". Earlier was the case where a particular language was exclusively spoken in a particular State, say in West Bengal "Bengali" was spoken by its residents, in Tamil Nadu "Tamil" was the

language spoken by its residences, in Gujarat "Gujarati" was the language spoken by its residents, in Punjab "Punjabi" was the language spoken by its residents and like others. Because at the relevant point of time, the States were formed on the major consideration of its language, culture and script. Such is not the case if the matter is considered after 50 years of the Constitution. Large number of States are formed which are having more than one as its regional language, script and its culture. It may be that in certain States there may not be any language which is spoken by more than 50% of its population. Therefore, while allowing the person to claim the status of belonging to a particular linguistic group, various aspects are required to be considered like the mother tongue of the persons concerned, such mother tongue should be also of forefathers, because mother tongue not necessarily mean the mother tongue spoken in that particular region or area where he is born. However, if "Hindi" is a language especially of a person since his forefathers, it can be said that "Hindi" is the mother tongue of such person and he an claim the linguistic group of "Hindi" for the purpose of seeking protection under the Constitution. Each case of the petitioner cannot be conveniently examined by this Court in this group of petitions, more particularly while exercising power under Article 226 of the Constitution and it will be for the authority concerned to examine the same and to record the findings for such purpose and then to confer the status on linguistic minority group. If as an outcome of the said inquiry it is found that the petitioners or the Trustees of the petitioners are belonging to linguistic group of "Hindi", the benefit of minority status and also the protection as guaranteed under Article 29 and 30 of the Constitution can be conferred unless it is not meeting with other criteia as referred to hereinafter. But if such is not the case, then merely because "Hindi" is used as medium of speech though "Hindi" is not the mother tongue of the persons as referred to hereinabove, linguistic group of "Hindi" cannot be claimed by such person.

14. Mr.Oza, learned Government Pleader for the respondents has raised much grievance about the functioning, the manner, and misuse of the status of the petitioners as minority institutions. As such for claiming the benefit of the grant-in-aid code the control of the State over minority or non-minority institutions, more particularly qua the recruitment of its staff, accommodation of surplus teachers, etc., would remain more or less the same. The reference may be made to the

decision of this Court in case of "Atladara Kelavani Mandal & Ors. v. State of Gujarat" in SCA No.1065/2002 and allied matters as per the decision dated 9-10-2003. It would be within the purview of the authority to take action if it is found that the institution has defied any of the provisions of the law which is otherwise binding and the authority is within its power to take action in accordance with law.

15. Mr.Oza also submitted that considering the constitution of the Trusts, its objects and others the status cannot be claimed as of minority.

16. In my view, what could be the scope and ambit for ascertaining the status on the basis of the constitution of the Trust, its Trustees, the objects etc., are considered by this Court in the above referred decision and at para 9 of the said decision it has been observed as under:

"9. A question may arise as to what would be and could be the yardstick for the purpose of ascertaining the status of an institution as that of minority institution. In my view, there can be various considerations for coming to the conclusion as to whether an institution is a minority institution or not. Merely because it is formed by the person belonging to the minority, may be linguistic or religious, itself would not confer the status automatically as that of the minority institution. It is not necessary that a person belonging to the minority community or linguistic minority may not desire to make charity or render services to the public at large irrespective of the fact that the beneficiaries are belonging to such minority or not. If the belonging of the author of the Trust or belonging of the community of the author of the Trust or belonging of the community of the Trustees, who are to participate in the Trust, are to be treated as the only yardstick then in my view, it would frustrate the basic features or quality of human psychology or mankind in general. It is not necessary that a person belongs to a minority community and, therefore, he would be every time desired to see that his fund or property is used only for the community to which he belongs. There are number of cases where the persons belonging to minority have extended their valuable properties and services by various modes to all public, including non minority. There are

also cases where the persons belonging to non-minority have rendered their valuable properties and services to non-minority as well as to minority. Therefore, a person is belonging to a minority community, may be religious or linguistic, cannot be the sole and absolute criteria for testing the institution as that of the minority institution. It may be one of the considerations, but, at the same time, major consideration, in my view, which would rather be one of the crucial tests, is the formation of the institution for the benefit of linguistic or religious minority. Fund may be coming from any source or who is the author of such Trust, or settlor of the Trust, may be relevant, but not the only relevant consideration. What is more required to be considered is the desire of the settlor of the Trust or the Trustees itself or the Deed of the Trust, which would speak for advancement, encouragement or for upliftment of such minority institution. If the Deed is silent on this aspects, then, it would be possibly difficult to reach to a definite conclusion that an institution belongs to a minority. The intention appears to be that if an institution is formed by the person belonging to the minority for the benefit of the minority. It may be that in addition thereof the benefits of the institutions are made available to non-minority but, at some where or at some place, the intention must be shown to make it apparent for encouraging or for advancement or for upliftment or even for preservation of culture or class of minority, may be in the field of education or any other field. Therefore, Mr.Mehta and Mr.Vyas are not right in contending that since the institution is formed by the majority of the persons belonging to the religious or linguistic minority, it would automatically be entitled to claim the status of minority. It is true that identification of such status may not be relevant but when a claim is based for invoking Article-30 of the Constitution, or wherever such provision of Article-30 is invoked, it would be for the authority concerned or the Court concerned to examine the facts of each case and to find out as to whether the institution is genuinely a minority institution or as in the language used by the Apex Court in the above referred judgement in the case of A.P. Christians Medical Educational Society (supra) that it is having a

> mask of phantoms for claiming the status of minority. Therefore, there cannot be any straight jacket formula for testing or examining the status of an institution as minority. It would vary from facts to facts and various considerations may be required to be examined and some of them are - the persons forming the institutions, the intention with which the institutions is formed, the beneficiaries of the institutions by and large and whether any intention is made express or implied for advancement, upliftment or preservation of minority, etc."

17. Therefore, it will be for the authority to examine each case and to render the decision to that extent after taking into consideration all the relevant aspects keeping in view the observations made hereinabove.

18. In view of the above, it deserves to be declared that a person or group of persons belonging genuinely to the group of "Hindi" linguistic can claim status as linguistic minority in Gujarat State. However, it will be for the concerned authority of the State Government to examine the facts of each institution keeping in view the observations made hereinabove and to ascertain as to whether such persons or group of persons running the petitioner institutions are genuinely belonging to "Hindi" linguistic group and it will also be for the Officer concerned to examine the constitution and functioning of each petitioner institution and to find out as to whether the petitioner institutions are formed with an object to promote and preserve "Hindi" language, script and culture or not and if as the outcome of the inquiry it is found that the concerned petitioner institutions either themselves or their Trustees belong to genuinely "Hindi" linguistic group and the institution is formed with an object to promote and preserve "Hindi" as its language, culture and script, consequently the status would be conferred upon such petitioners for such purpose as minority institutions. Therefore, unless the aforesaid exercise is undertaken for Saraswati Vidya Mandir, reliefs prayed for in SCA No.15270/03 can not be granted at this stage.

19. Spl.C.A.Nos 15312/03 and 2850/04 are allowed to the aforesaid extent only. Rule partly made absolute. In view of directions in SCA No.15312/03 and 2850/04 and subject to the observations made hereinabove, Rule discharged in SCA No.15270/03. Considering the facts and

circumstances, there will be no order as to costs.

29-7-2004 (Jayant Patel, J.)

After the pronouncement of the order, Mr.Vyas for the petitioner of SCA No.15312/03 and Mehta for the petitioner of SCA No.2850/04 requested that untill the inquiry is concluded, the present status of the petitioenr be continued. Mr.Gandhi appearing for the institution in SCA No.15270/03 states that on account of pendency of these petitions the approval of the appointment of principal is not granted and therefore appropriate observations may also be made in this regard.

2. Considering the above it will be for the authority to examine the matter of each case and then to confer the status or otherwise. Till then the present status as prevailing today, whether as minority institution of or not, shall continue.

29.7.04 (JAYANT PATEL,J)